

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Randy M. Stone,

v.

State of Nevada, *et al.*,

Petitioner,

Respondents.

Case No. 3:22-cv-00136-ART-CLB

Order Granting Motion to Stay

(ECF No. 43)

Petitioner Randy M. Stone, through counsel the Federal Public Defender, has filed a motion for stay and abeyance of this 28 U.S.C. § 2254 habeas corpus matter while he seeks an order from the Ninth Circuit Court of Appeals authorizing him to file this second and successive petition. (ECF No. 43.) Respondents oppose, and Stone replied. (ECF Nos. 44, 45.) In order to allow Stone to seek the requisite authorization, the Court grants the motion for stay.

Under 28 U.S.C. § 2244(b)(3)(A), “Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” “The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfied the requirements” of 28 U.S.C. § 2244(b)(2). *See, e.g., Seka v. Johnson*, Case No. 22-1795 (9th Cir. Feb. 17, 2023) (granting application for authorization to file second or successive habeas corpus petition and transferring proposed petition to district court).

Stone seeks to challenge the same judgment of conviction that he challenged in *Stone v. Palmer, et al.*, Case No. 3:08-cv-00172-RCJ-VPC (D.Nev. May 8, 2008) (“*Stone I*”). United States District Judge Robert C. Jones denied

1 the petition in *Stone I* on its merits and denied a certificate of appealability on
2 August 2, 2011. See *Stone I*, ECF No. 54. Stone appealed, and the Ninth Circuit
3 Court of Appeals denied a certificate of appealability on March 20, 2012. See
4 *Stone I*, ECF No. 60.

5 On September 29, 2014, Stone filed an application for leave to file a
6 second or successive habeas corpus petition with the Ninth Circuit. The Ninth
7 Circuit denied the application on December 17, 2014. See *Stone v. Legrand*,
8 Case No. 14-73019.

9 This petition, therefore, is a second or successive habeas corpus petition
10 under § 2244(b). Stone must obtain authorization from the Ninth Circuit before
11 this Court may consider his petition. Stone now acknowledges this and informs
12 the Court that he is currently seeking such authorization with the appeals
13 court. (ECF No. 43.) He asks the Court to stay this case pending the grant or
14 denial of such authorization. The Court accordingly grants the motion to stay.

15 It is therefore ordered that Petitioner's motion for a stay and abeyance
16 **(ECF No. 43) is granted.**

17 It is further ordered that this action is stayed pending authorization by
18 the Ninth Circuit Court of Appeals under § 2244(b)(3)(A) to file a second and
19 successive petition.

20 It is further ordered that the grant of a stay is conditioned upon Petitioner
21 returning to federal court with a motion to reopen the case within 45 days of
22 the court of appeals' decision, whether he returns to voluntarily dismiss this
23 Petition or to move to re-open this case and set a further briefing schedule.

24 It is further ordered that Petitioner's unopposed motion for leave to file
25 document **(ECF No. 46) is granted.**

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1 The Clerk of Court is directed to administratively close this action, until
2 such time as the Court grants a motion to reopen the matter.

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4 DATED THIS 28th day of August 2024.

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8 ANNE R. TRAUM
9 UNITED STATES DISTRICT JUDGE

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